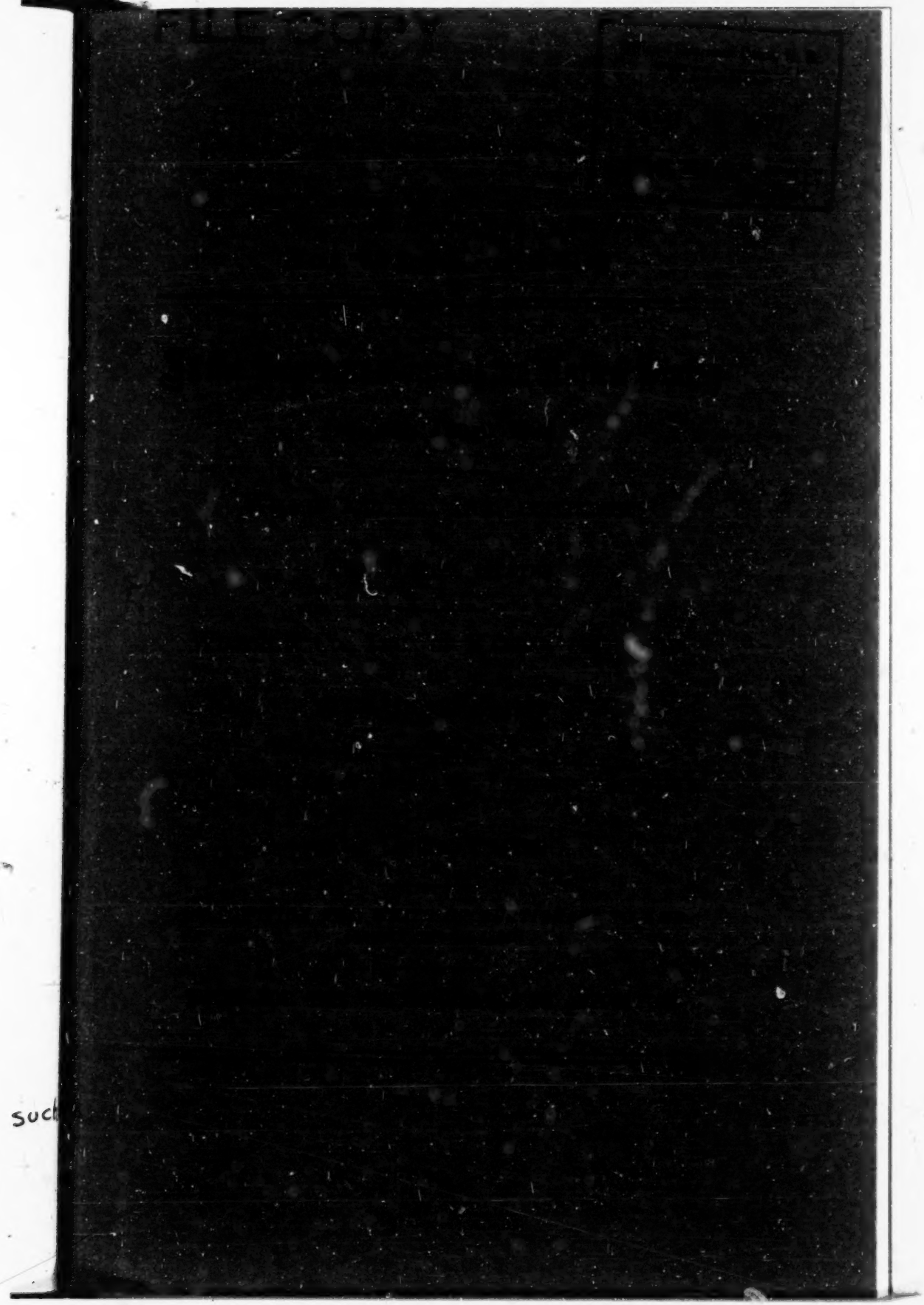

INDEX

	Page
Opinion below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	2
Argument	3
Conclusion	7
Appendix	8

CITATION

Case:	
Cudahy Bros. Co. v. *LaBudde*, 92 F. (2d) 937, certiorari denied, 303 U. S. 659	4, 6
Statutes:	
Agricultural Adjustment Act, c. 25, 48 Stat. 31, Sec. 17, as amended (U. S. C., Title 7, Sec. 617)	8
Revenue Act of 1936, c. 690, 49 Stat. 1648:	
Sec. 601 (U. S. C. Supp. IV, Title 7, Sec. 641)	8
Sec. 602 (U. S. C. Supp. IV, Title 7, Sec. 642)	10
Sec. 901 (U. S. C. Supp. IV, Title 7, Sec. 623, note)	11
Sec. 902 (U. S. C. Supp. IV, Title 7, Sec. 644)	11
Sec. 903 (U. S. C. Supp. IV, Title 7, Sec. 645)	12
Sec. 905 (U. S. C. Supp. IV, Title 7, Sec. 647)	13
Sec. 906 (U. S. C. Supp. IV, Title 7, Sec. 648)	13
Sec. 911 (U. S. C. Supp. IV, Title 7, Sec. 653)	14
Sec. 913 (U. S. C. Supp. IV, Title 7, Sec. 655)	15
Miscellaneous:	
H. Rep. No. 2475, 74th Cong., 2d sess., pp. 13–14	6
Petition for certiorari in No. 823, Oct. Term, 1937	5

220259—40——1

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 778

WILSON AND CO., INC., PETITIONER

v.

THE UNITED STATES

No. 779

WILSON & CO., INC., OF KANSAS, PETITIONER

v.

THE UNITED STATES

No. 780

T. M. SINCLAIR & COMPANY, LIMITED, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 11–15) is reported in 30 F. Supp. 672.

JURISDICTION

The judgment of the court below was entered December 4, 1939. (R. 15.) On January 10, 1940, the petitioners filed a motion for leave to file amended petitions, which was overruled on February 5, 1940. (R. 15.) The petition for writs of certiorari was filed March 1, 1940. (R. 18.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether the Court of Claims has jurisdiction to entertain a suit brought by an exporter for refunds of processing and floor stock taxes imposed by the Agricultural Adjustment Act.

STATUTES INVOLVED

The pertinent portions of the applicable statutes are set forth in the Appendix, *infra,* pp. 8–15.

STATEMENT

The court below decided these cases upon the petitions and motions to dismiss, filed by the Government. (R. 11.) From the petition in No. 778,[1] the following facts appear (R. 1–3):

The petitioner, a corporation, was engaged, during the period in controversy, in the preparation,

[1] Since the petitions in all three cases are almost identical, we have confined our statement to the facts presented in the petition in No. 778.

packing and selling of meat products, including hog products for foreign and domestic commerce. (R. 1.)

Subsequent to November 5, 1933, and prior to January 6, 1936, petitioner exported, in its own name, large quantities of hog products to foreign countries, upon which it had paid processing taxes and floor stock taxes. (R. 1.)

Petitioner alleges that the taxes so paid are refundable to it pursuant to the provisions of Section 17 (a) of the Agricultural Adjustment Act, as amended. (R. 1–2.)

Upon the exportation of the hog products, and prior to June 22, 1936, claims for refund of processing and floor stock taxes paid were filed by petitioner with the appropriate Collector of Internal Revenue. Each of the claims so filed was rejected by the Commissioner of Internal Revenue. (R. 2–3.)

Upon the foregoing facts, the Court of Claims held that it was without jurisdiction and dismissed the petition. (R. 15.)

ARGUMENT

These are suits brought in the Court of Claims by exporters to recover processing and floor stock taxes paid under the provisions of Section 9 (a) and Section 16 (a) of the Agricultural Adjustment Act, as amended. The suits involve taxes

paid prior to January 6, 1936, for which claims for refund were filed prior to June 22, 1936.

1. The principal controversy concerns the determination of the applicable statutory provisions governing the administrative and judicial procedure for obtaining refunds of taxes imposed by the Agricultural Adjustment Act. There are three possible alternatives:

(a) Title IV, Revenue Act of 1936; (b) Title VII, Revenue Act of 1936; (c) Section 17 (a), Agricultural Adjustment Act.

The court below held that the cases are governed by Title IV of the Revenue Act of 1936, *infra*, p. 8. If so, the determination of the Commissioner of Internal Revenue with respect to refund claims is final. Section 601 (e) of Title IV so provides, and further states that "no court shall have jurisdiction to review such determination." Accordingly, the Court of Claims properly held that it was without jurisdiction.

The holding that these actions are suits to recover drawbacks on exportation under Title IV, and not suits under Title VII, Revenue Act of 1936, *infra*, p. 11, for the refund of processing and floor stock taxes, is in accord with rather than in conflict with *Cudahy Bros. Co.* v. *La Budde*, 92 F. (2d) 937 (C. C. A. 7th), certiorari denied, 303 U. S. 659. In that case the Government demurred in the District Court upon the ground that the govern-

ing provisions were to be found in Title VII, and that under those provisions review of the Commissioner's determination might be had only before the Processing Tax Board of Review whose decision, in turn, was reviewable only by the circuit courts of appeals.[2] The District Court overruled the demurrer and the Circuit Court of Appeals affirmed, upon the ground that Title IV rather than Title VII was applicable. However, the Circuit Court of Appeals in the *Cudahy* case failed to note that the District Court had no power to entertain the suit even under Title IV, *for the jurisdictional question presented by Section 601 (e) was not raised.*[3] Accordingly, far from being in conflict with the *Cudahy* case, the present decision is in accord therewith since it holds that Title IV is applicable; the cases were disposed of differently only because of the application of certain provisions (Section 601 (e)) which were not raised in the *Cudahy* case. The decisions are therefore not in conflict.

---

[2] With regard to the floor stock taxes, it was alleged that the petitioner could not maintain the suit, inasmuch as it failed to allege compliance with Sections 902, 903, and 906 of the Revenue Act of 1936.

[3] The Government presented the point for the first time in its petition for certiorari, No. 823, October Term, 1937, and did contend there that if the question were governed by Title IV and not by Title VII, then under Section 601 (e) the court did not have jurisdiction.

Petitioners attempt to avoid the limitations of the 1936 Act upon the theory that these suits are based exclusively upon Section 17 (a) of the Agricultural Adjustment Act. But Section 17 (a) was reenacted by Section 601 of Title IV of the Revenue Act of 1936. The authority of the Commissioner to continue the making of refunds was thereby renewed.[4] However, Section 601 (e) made the Commissioner's determination final and it clearly precluded the Court of Claims from entertaining these suits.[5]

2. Petitioners urge the granting of the writs upon the additional ground that four thousand similar claims involving large sums of money are pending before the Bureau of Internal Revenue (Pet. 6). But the question is of considerably less importance now than it was two years ago when the Government unsuccessfully petitioned for certiorari in the *Cudahy* case on this very ground and when there were nearly twice as many claims outstanding involving about twice the aggregate amount of money. Moreover, even though there may still remain about four thousand claims, we are

---

[4] H. Rep. No. 2475, 74th Cong., 2d Sess., pp. 13–14. See also *Cudahy Bros. Co.* v. *LaBudde*, *supra*, p. 939.

[5] If certiorari should be granted in this case the Government reserves the right to make the contention made in the motions to dismiss, which is that Title IV of the 1936 Act relates only to exporters who are not processors; that Title VII relating to processors is governing as to exporters who are also processors, and that the present suits are not maintainable in the Court of Claims under Title VII.

informed that they involve only a relatively small number of taxpayers, so that it is unlikely that there will be very many independent suits based thereon.

CONCLUSION

The result reached by the court below is correct and no conflict of decisions has been shown. The petition should be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

SAMUEL O. CLARK, JR.,
Assistant Attorney General.

SEWALL KEY,
J. LOUIS MONARCH,
ELIZABETH B. DAVIS,
Special Assistants to the Attorney General.

MARCH 1940.

220259—40——2

APPENDIX

Agricultural Adjustment Act, c. 25, 48 Stat. 31, as amended by Section 12 of the Act of May 9, 1934, c. 263, 48 Stat. 670:

> SEC. 17. (a) Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product with respect to which a tax has been paid under this title, or of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid under this title, the tax due and paid shall be refunded. The refund shall be paid to the exporter or to the consignor named in the bill of lading under which the product is exported, as determined under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. * * * [U. S. C., Title 7, Sec. 617.]

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> TITLE IV—EXPORT, CHARITABLE, ETC., REFUNDS AND FLOOR STOCKS ADJUSTMENT UNDER AGRICULTURAL ADJUSTMENT ACT
>
> SEC. 601. REFUNDS UNDER AGRICULTURAL ADJUSTMENT ACT ON EXPORTS, DELIVERIES FOR CHARITABLE DISTRIBUTION OR USE, ETC.
>
> (a) The provisions of sections 10 (d), 15 (a), 15 (c), 16 (e) (1), 16 (e) (3), and 17 (a) of the Agricultural Adjustment Act, as amended, are hereby reenacted but only for

the purpose of allowing refunds in accordance therewith in cases where the delivery for charitable distribution or use, or the exportation, or the manufacture of large cotton bags, or the decrease in the rate of the processing tax (or its equivalent under section 16 (e) (3)), took place prior to January 6, 1936.

(b) Except for refunds under section 15 (a) of the Agricultural Adjustment Act, as reenacted herein, no refund under this section shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based. No refund under this section shall be allowable to any person with respect to any articles where such person prior to January 6, 1936, paid an amount as tax under the Agricultural Adjustment Act, as amended, by taking as a credit against such amount an amount otherwise allowable as a refund with respect to such articles under sections 15 (a), 15 (c), 16 (e) (1), 16 (e) (3), or 17 (a) of said Act. No refund under this section shall be allowed to any person except to the extent that he establishes that he has not received, and is not entitled to receive, reimbursement of such amount from the processor or other vendor with respect to the articles on which the claim is based. No claim under this section (except claims of processors under section 15 (a) shall be disallowed on the ground that the tax with respect to the article or the commodity from which processed has not been paid.

(c) No refund under this section shall be made unless the claimant files a claim therefor prior to January 1, 1937, under rules and regulations prescribed by the Commis-

sioner of Internal Revenue with the approval of the Secretary of the Treasury, and no claim shall be allowed in an amount less than $10. Sections 16 (g) and 21 (f) of the Agricultural Adjustment Act, as amended, are repealed.

(d) In the absence of fraud, the findings of fact and the decision of the Commissioner of Internal Revenue upon the merits of any claim adjusted pursuant to this section and the mathematical calculation therein shall not be subject to review by any administrative or accounting officer, employee, or agent of the United States.

(e) The determination of the Commissioner of Internal Revenue with respect to any refund under this section shall be final and no court shall have jurisdiction to review such determination.

* * * * *

[U. S. C. Supp. IV, Title 7, Sec. 641.]

SEC. 602. FLOOR STOCKS AS OF JANUARY 6, 1936.

(a) There shall be paid to any person who, at the first moment of January 6, 1936, held for sale or other disposition (including manufacturing or further processing) any article processed wholly or in chief value from a commodity subject to processing tax, an amount computed as provided in subsection (b), except that no such payment shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based.

(b) The amount of the payment under subsection (a) shall be equal to the processing tax which would have been payable with respect to the commodity from which the article was processed, if it had been proc-

essed on January 5, 1936, but not in excess of (1) the amount of the burden of the tax with respect to the article which was shifted to the claimant in the price he paid for the article (to the extent that the claimant has not received and is not entitled to receive reimbursement for such burden from the processor or other vendor) and not in excess of (2) the amount of that part of the burden of the tax applicable to the articles held on January 6, 1936, which the claimant has not passed on to his vendees and has not included in the sale price of such articles. * * * [U. S. C. Supp. IV, Title 7, Sec. 642.]

TITLE VII — REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT

SEC. 901. REPEALS.

Sections 21 (d), 21 (e), and 21 (g) of the Agricultural Adjustment Act, as amended, are hereby repealed. [U. S. C. Supp. IV, Title 7, Sec. 623, note.]

SEC. 902. CONDITIONS ON ALLOWANCE OF REFUNDS.

No refund shall be made or allowed, in pursuance of court decisions or otherwise, of any amount paid by or collected from any claimant as tax under the Agricultural Adjustmen Act, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the trial court, or the Board of Review in cases provided for under section 906, as the case may be—

(a) That he bore the burden of such amount and has not been relieved thereof nor

reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction of the price paid for any such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; or

(b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever. [U. S. C. Supp. IV, Title 7, Sec. 644.]

SEC. 903. FILING OF CLAIMS.

No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Agricultural Adjustment Act unless, after the enactment of this Act, and prior to July 1, 1937, a claim for refund has been filed by such person in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claim shall be clearly set forth

under oath. The Commissioner is authorized to prescribe by regulations, with the approval of the Secretary, the number of claims which may be filed by any person with respect to the total amount paid by or collected from such person as tax under the Agricultural Adjustment Act, and such regulations may require that claims for refund of processing taxes with respect to any commodity or group of commodities shall cover the entire period during which such person paid such processing taxes. [U. S. C. Supp. IV, Title 7, Sec. 645.]

SEC. 905. JURISDICTION OF COURTS.

Concurrent with the Court of Claims, the District Courts of the United States (except as provided in section 906 of this title) shall have jurisdiction of cases to which this title applies, regardless of the amount in controversy, if such district courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy. The United States Customs Court shall not have jurisdiction of any such cases. [U. S. C. Supp. IV, Title 7, Sec. 647.]

SEC. 906. PROCEDURE ON CLAIMS FOR REFUNDS OF PROCESSING TAXES.

(a) Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of the enactment of this Act, shall be brought or maintained in any court for the refund of any amount paid or collected as processing tax, as defined herein, under the Agricultural Adjustment Act, except as provided in this section. The Commissioner shall allow or disallow, in whole or in part, any claim for refund of any such amount within

three years after such claim was filed, unless such time has been extended by written consent of the claimant.

(b) There is hereby established in the Treasury Department a Board of Review (hereinafter referred to as "the Board"). The Board shall be composed of nine members who shall be officers or employees of the Treasury Department designated by the Secretary of the Treasury. * * *

* * * * *

(g) A review of the decision of the Board, made after the hearing provided in this section, may be obtained by the claimant or Commissioner by filing a petition for review in the Circuit Court of Appeals of the United States within any circuit wherein such claimant resides, or has his principal place of business, or, if none, in the United States Court of Appeals for the District of Columbia, or any such court which may be designated by the Commissioner and the claimant by stipulation in writing, within three months after the date of the mailing to the claimant and the Commissioner of the copy of the findings and decision of the Board. * * * [U. S. C. Supp. IV, Title 7, Sec. 648.]

SEC. 911. INAPPLICABILITY TO CERTAIN REFUNDS.

The provisions of this title shall not apply to any refund authorized under the provisions of sections 15, 16, or 17 of the Agricultural Adjustment Act, as amended and reenacted, or with respect to any articles exported under the provisions of section 317 of the Tariff Act of 1930. No refund shall be made or allowed of any amount paid or collected as tax under the Agricultural Adjustment Act, as amended and reenacted, to

the extent that refund or credit with respect to such amount has been made to any person. [U. S. C. Supp. IV, Title 7, Sec. 653.]

SEC. 913. DEFINITIONS.

When used in this title—

(a) The Term "tax" means a tax or exaction denominated a "tax" under the Agricultural Adjustment Act, and shall include any penalty, addition to tax, additional tax, or interest applicable to such tax.

(b) The term "processing tax" means any tax or exaction denominated a "processing tax" under the Agricultural Adjustment Act, but shall not include any amount paid or collected as tax with respect to the processing of a commodity for a customer for a charge or fee.

* * * * *

[U. S. C. Supp. IV, Title 7, Sec. 655.]

U. S. GOVERNMENT PRINTING OFFICE: 1940